



Order 98-5-31

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 22nd day of May 1998

Served May 22, 1998

Ethiopian Airlines

**Violations of 49 U.S.C. § 41301
and 49 U.S.C. § 41712**

CONSENT ORDER

This order concerns unauthorized advertising and sales by Ethiopian Airlines, a foreign air carrier, during the pendency of its application for certificate and exemption authority with the Department. Ethiopian applied for permit authority from the Department under 49 U.S.C. § 41302 on April 9, 1998, and simultaneously filed an application for exemption authority, to be effective until receipt of permit authority, to operate to the U.S. from its home country. Ethiopian planned its inaugural flight and commencement of operations to the U.S. for June 4, 1998. While its applications were under review at the Department, the carrier placed advertisements, took reservations, sold tickets, and listed its prospective service in computer reservations systems and in both the electronic and printed *Official Airline Guides*.

The Office of Aviation Enforcement and Proceedings (the Enforcement Office) has for many years taken the position that holding out and sale of air transportation in the U.S. by a foreign air carrier which does not hold the requisite economic authority from the Department violates the provisions of 49 U.S.C. §41301, which require that a carrier obtain permit authority prior to initiating service, or an appropriate exemption. Part 201 of our rules (14 CFR 201.5) states that applicants for air carrier authority may not "advertise, list schedules or accept reservations" or "accept payment or issue tickets," until their applications have been granted. While this rule specifically refers to U.S. air carrier applicants for authority, the same policy concerns apply with respect to foreign air carrier applicants. The advertising and sale of the proposed service may create unjustified expectations on the part of the traveling public and the sales of such service place consumer funds in jeopardy. In this connection, the Department in a recent notice in the

Federal Register,¹ made clear that any advertising or sales of service by foreign air carriers in the U.S., prior to the receipt of the appropriate Department authority, not only violates the permit requirements of 49 U.S.C. §41301, but constitutes an unfair and deceptive trade practice and an unfair method of competition in violation of 49 U.S.C. § 41712. These violations are subject to the assessment of civil penalties under 49 U.S.C. §46301.

In mitigation, Ethiopian states that its staff, in preparing for the prompt inauguration of its U.S. service, was not familiar with the Department's consumer rules with respect to sales and advertising, and expected expedited issuance of the permit authority. Further, Ethiopian states that the carrier indicated in its advertisements and prior to its sales that its service was subject to government approval. Ethiopian, moreover, asserts that it attempted to curtail its advertising activities when warned by the Department of its apparent violations. Finally, Ethiopian points out that it had agreed with the Enforcement Office that, in the event its operating authority was not granted by June 4, 1998, it would make alternate arrangements for consumers booked on flights prior to its receipt of authority. The carrier states that its long record of operation throughout the world attests to its compliance disposition and its commitment to meeting regulatory requirements, and it assures us that it will not allow a repetition of these violations.

The Enforcement Office believes that Ethiopian's recent violations of the permit requirements of 49 U.S.C. 41301 require enforcement measures. In order to avoid litigation, Ethiopian has agreed to the issuance of this order to cease and desist and the findings made below. By this order, Ethiopian is assessed \$12,000 in compromise of potential civil penalties otherwise assessable under 49 U.S.C. §46301, reflecting its violations of 49 U.S.C. §41301 and 49 U.S.C. § 41712. Of this amount, the carrier shall pay \$6,000 by July 1, 1998; the remaining \$6,000 shall be suspended for one year following the service date of this order and shall be forgiven unless Ethiopian fails to comply with the payment provisions of this order or commits other violations of 49 U.S.C. § 41301, 49 U.S.C. § 41712, or this order during the year following service of this order, in which case the entire unpaid portion of the \$12,000 assessed penalty shall become due and payable immediately. The Enforcement Office believes that the issuance of this order and the assessment of this civil penalty will provide an incentive to foreign and domestic air carriers to comply fully with the licensing requirements of our statute in the future, and deter the premature advertising or issuance of tickets for proposed service, the authority for which remains under review at the Department.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.15.

¹ 62 Fed. Reg. 51175, Sept. 30, 1997.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that Ethiopian Airlines violated 49 U.S.C. §41301 and 49 U.S.C. §41712 by advertising and listing its prospective U.S. service in computer reservations systems and in the *Official Airline Guide*, and taking reservations and selling tickets for that service, without appropriate permit or exemption authority;
3. We order Ethiopian Airlines to cease and desist from further violations of 49 U.S.C. §41301 and 49 U.S.C. § 41712, as described above; and
4. Ethiopian Airlines is assessed \$12,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraph 2 of this order. Of this amount, \$6,000 shall be paid by July 1, 1998. The remaining \$6,000 of the penalty assessed here shall be suspended for one year following the service date of this order and shall be forgiven unless Ethiopian Airlines fails to comply with the payment provisions of this order or commits other violations of 49 U.S.C. §41301, 49 U.S.C. § 41712, or this order, during that period, in which case the entire unpaid portion of the assessed penalty shall become due and payable immediately and Ethiopian Airlines may be subject to further enforcement action; and
5. Payments shall be made by wire transfer through the Federal Reserve Communications System, commonly known as "Fed wire," to the account of the U. S. Treasury in accordance with the attached instructions. Failure to pay the penalty as ordered will subject Ethiopian to the assessment of interest, penalty and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with this order.

This order will become a final order of the Department 10 days after its service unless a timely petition for review is filed or the Department takes review on its own motion.

By:

ROSALIND A. KNAPP
Deputy General Counsel

(SEAL)

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